

Validity of auction sale under SARFAESI Act: DRAT KOLKATA

Jaganath Mahaprabhu LLP

...Appellant

M/s. Jain Steel & Power Ltd.

...Respondent

Case No: Appl No. 44 of 2021

Date of Judgement: 30 March, 2023

Judges:

Anil Kumar Srivastava, J – Chairperson

For Appellant: Mr. A.K.Dhandhanian, Ms. Sudarshana Dutta, Mr. Jiban Ballav Panda, Advocates.

For Respondent: Mr. Nimes Mishra, Learned Counsel with Mr. D. Mukherjee, Ms. Poetry Dutta, Advocates.

Facts:

Appellant Jaganath Mahaprabhu LLP participated in an e-auction conducted by respondent HUDCO (secured creditor) to recover loans given to respondent 1 Jain Steel and Power Ltd. (borrower). Appellant emerged as highest bidder in the auction held on 27.04.2021 and deposited 25% of the bid amount on 28.04.2021 as per terms. Meanwhile, the borrower (respondent 1) had filed an application before the Debts Recovery Tribunal (DRT) to stay the auction scheduled on 27.04.2021. The DRT heard the matter on 27.04.2021 and passed an interim order staying the auction sale. This stay order was communicated to the parties after conclusion of the e-auction. The DRT later set aside the auction by holding that relevant rules for sale notice were not followed. Appellant filed the present appeal challenging this.

Arguments by Appellant:

Appellant participated in valid e-auction process by HUDCO after public notice. Appellant declared highest bidder and deposited 25% amount as required. Nothing on record to show DRT passed any oral stay order before conclusion of auction. Amount deposited by Appellant on next day as funds transfer takes time. Appellant acquired interest in property as highest bidder who deposited money as required. RT wrongly set aside sale without considering Appellant's accrued rights.

Arguments by Borrower (Respondent 1):

DRT was hearing stay application against auction during the time auction was conducted. DRT had orally asked parties not to proceed with auction during hearing. Written stay order passed and communicated after conclusion of auction. No confirmation of sale done by HUDCO in favour of Appellant in terms of Rules. Appellant deposited money despite stay order, hence no right accrued. Appeal not maintainable due to lack of Appellant's accrued interest.

Court's Reasoning and Conclusions:

Provisions of SARFAESI Act and Rules prevail over general procedural laws like CPC (Para 29-30). As per Rule 9(2) of Security Interest Rules, auction subject to confirmation by secured creditor (Para 31-32). Supreme Court has held no rights accrue to bidder until sale confirmed by authority, in auctions subject to confirmation (Para 32). No evidence presented to show HUDCO confirmed sale in favour of Appellant prior to stay order (Para 34-35). Both Appellant and HUDCO acted in disregard of DRT's stay order (Para 36). Mere deposit of 25% of bid amount does not give any right to Appellant (Para 37). Appellant not an affected party having accrued right to file appeal, hence appeal is not maintainable (Para 40-41).

Order:

Appeal dismissed as not maintainable.

Appellant entitled to refund of deposit amount with interest till date of payment.

Sections Cited:

Section 13, SARFAESI Act (Pg 1)

Section 38 SARFAESI Act (Pg 12)

Rule 9 of Security Interest (Enforcement) Rules, 2002 (Pg 6, 12, 31)

Cases Referred:

Valji Khimji And Co. vs Official Liquidator (Pg 6, 14, 15)

Kotak Mahindra Bank Ltd. vs Girnar Corrugators Pvt Ltd (Pg 13)

My Palace Mutually Aided Society vs B Mahesh (Pg 18)

Download

Court

Copy <https://dreamlaw.in/wp-content/uploads/2024/02/DRAT-KOLKATA10.pdf>

Full Text of Judgment:

1.This appeal has arisen against the judgement and order dated 29.09.2021 passed in S.A. No. 56 of 2021 [M/s. Jain Steel & Power Ltd.& Anr. Vs. Housing & Urban Development Corporation Ltd. & Ors.] delivered by DRT, Cuttack, charge of DRT Cuttack was holding by Presiding Officer, DRT, Visakhapatnam.

2. S.A. No. 56 of 2021 was filed by corporate debtor M/s. Jain Steel & Power Ltd. (SARFAESI Applicant and Respondent NO.1 and 2 in appeal) against the Housing & Urban Development Corporation Ltd. (HUDCO), (respondent no.3 in appeal), and authorised officer, (respondent no.4 in appeal). Pending S.A., appellant herein Jagannath Mahaprabhu LLP through his partner Shri Anil Kumar Kedia (A.K. Kedia) was impleaded as respondent no.3, (in the SARFAESI Application) the highest bidder in the auction held by respondent no.1 and 2. By the impugned order learned DRT has allowed the S.A. and declared the Notices issued under Rule 8(6) and 9(1) of the Security Interest (Enforcement) Rules, 2002 (hereinafter referred to as Rules of 2002) illegal and not valid, therefore, auction sale held on 27.04.2021 was also set aside. Appellant herein i.e. Jagannath Mahaprabhu LLP is the highest bidder in the auction held on 27.04.2021. Pertinently the secured creditor i.e. HUDCO has not filed any appeal challenging the judgement and order passed by learned DRT rather only the highest bidder has preferred this appeal.

3. As per pleadings of the parties, facts of the matter, in brief, are

that S.A. applicants (who are respondent no.1 and 2 in the appeal) have availed term loan of Rs.24.00 crore from HUDCO; Respondent no.3 and 4, Rs.16.4 crore from Indian Bank; Rs. 10.00 crore from Bank of India and Rs.7.50 crore from Punjab National Bank. Borrower respondent no.1 failed to adhere to the obligation to repay the loan as per terms and conditions. Hence, joint lenders initiated action under SARFAESI Act, 2002 (hereinafter referred to as Act of 2002) in order to recover the public money. All the rules and regulations under SARFAESI Act were followed by giving ample opportunities to respondent no.1. The loan was classified as NPA. Borrower made a representation u/s 13(3A) of the SARFAESI Act on 29.10.2013. It is stated that Notice issued u/s 13(2) was illegal. Loan account was illegally classified as NPA. No reply to representation u/s 13(3A) of the Act of 2002 was given rather the secured creditor proceeded under Sec. 13(4) of the Act of 2002. Physical possession was taken over on 17.03.2015. Thereafter, sale notices were published in two newspapers on different dates, but auction sale could not be concluded. Nine efforts were made to auction the property but all the attempts failed. Ultimately, the advertisement for e-auction sale was published in two newspapers on 26.03.2021 and the sale was held on 27.04.2021. It is further alleged that no sale notice was affixed on the conspicuous part of the property in terms of Rule 8(6) of the 4 Rules of 2002. Accordingly, sale notice dated 26.03.2021 and all other actions taken under Sec. 13(2) and 13(4) are allegedly illegal. Further, auction held in contravention of Rules 8(6) and 9(1) of the Rules of 2002 are illegal and are liable to be set aside.

4. Objections were filed by the creditor HUDCO alleging that all the actions were taken in accordance with the provisions specified in the Act of 2002 and Rules framed thereunder. It is further stated that loan account was classified as NPA in accordance with law. Application is barred by time as loan was classified NPA in 2013 and applicant has approached Tribunal after lapse of eight years. Further it is stated that no representation u/s 13(3A) was made within stipulated time. There is no irregularity and illegality in SARFAESI proceeding initiated against the borrower. Possession was taken in accordance with law. Notices u/s 8(6) of the Rules of 2002 is dated 17.03.2021.

Notice was published in two newspapers on 26.03.2021 and auction sale was conducted on 27.04.2021. Provisions of Rule 8(6) and 9(1) of the Rules of 2002 was duly complied with. Auction was held on 27.04.2021 wherein appellant herein was the highest bidder. Auction purchaser deposited 25% of the bid amount on 28.04.2021.

5. Appellant (who is respondent no.3 in S.A.) filed objection and stated that he participated in e-auction. He was declared the highest bidder on 27.04.2021. Thereafter, he deposited 25% of the bid amount on 28.04.2021. Appellant herein has gained interest over the property. Sale was confirmed by the bank on 27.04.2021, but learned DRT has wrongly allowed the S.A. and set aside the auction sale.

6. On the basis of pleadings of the parties learned DRT framed following issues :

- (i) Whether the declaration of NPA is illegal or not?
- (ii) Whether the provision of Section 13(3A) was complied or not?
- (iii) Whether Rule 8(6) and rule 9(1) was followed or not?
- (iv) Whether the purported e-auction sale conducted by the defendants No. 1 and 2 on 27.04.2021 is unlawful and to be set aside?

7. Learned DRT recorded finding on the issue no.1 to the effect that the loan account was legally classified as NPA. Accordingly, this issue was answered. On issue No. 2 learned DRT held that there is no violation of Section 13(3A) of the Act of 2002 by the financial creditor. On issue no.3 learned DRT has recorded finding that provisions of Rule 8(6) and 9(1) of the Rules of 2002 have not been followed. E-auction notice published on 26.03.2021 under Rule 8(6) fixing the date of sale on 27.04.2021 without issuing notice under Rule 9(1) which is against the law. Accordingly, auction sale held on 27.04.2021 in pursuance of notice under Rule 8(6) of the Rules of 2002 was set aside.

8. It would be pertinent to mention that the secured creditor i.e. HUDCO has not preferred any appeal against the impugned judgement and order. Hence as far as finding recorded by learned DRT are concerned they have been accepted by the HUDCO.

9. As far as finding on the issue no. 1 and 2 are concerned they were decided against the S.A. applicant. Against these findings no challenge was made by the S.A. applicant. No cross appeal is preferred. Accordingly, these two findings are accepted by the S.A. applicant and are final.

10. Appeal is preferred by the highest bidder i.e. the appellant herein, who challenged the findings on issue no.3 and 4 on the ground that he is the highest bidder for auction sale held on 27.04.2021. He had acquired right over the property by depositing 25% of the bid amount.

11. I have heard the learned counsel for the parties and perused the records.

12. At the very outset as far as contentions of HUDCO are concerned it is submitted by the learned counsel that no challenge is made by the secured creditor to the impugned judgement and order passed by learned DRT. Hence, whatever finding will be recorded by DRAT that would be complied by them.

13. Now dispute remains between the highest bidder i.e. appellant and respondent no.1 and 2 i.e. corporate debtor.

14. It is also evident from the record that SA. No. 56 of 2021 was filed by respondent no. 1 and 2, S.A. applicants before the DRT, which was listed for hearing on 26.04.2021. An interim prayer was made to stay the auction sale scheduled to be held on 27.04.2021 between 10-30 AM to 01.30 PM. Objections are invited by learned DRT and matter was listed for hearing on 27.04.2021. It is also not in dispute that the matter was heard by learned DRT on 27.04.2021. An interim order was passed by learned DRT to the effect that "this petition is allowed and stay is granted directing respondent not to proceed further in pursuance

to the auction sale notice dated 26.03.2021 and not to conduct the auction sale on 27.04.2021". It is further ordered that "not to take any coercive steps till next date of hearing." It is also not in dispute that e-mail message was sent by learned counsel for the S.A.

applicant to debendramisra@yahoo.com on 27.04.2021 at 05-24 PM communicating the order passed by learned DRT in I.A. 440 of 2021 to communicate the parties about the order.

15. Communication vide letter No. HUDCO/BBR0/ 18895/368 dated 27.04.2021 was made by the HUDCO to Shri A.K.Kedia, partner Janannath Maharabhu LLP, appellant to the effect that : "We are thankful to you for your participation in the E-auction vide auction id#225111 conducted on the auctionger.com. As you have emerged as the successful bidder with highest bid amount of Rs.27,96,000/- you are requested to deposit the 25% of the offered bid price in terms of the tender document at the earliest, but not later than 28.04.2021 by 05.00 PM. The amount may bbe transferred through RTGS to the following bank account.

Account name : M/s Jain Steel & Power Ltd. – SARFAESI action.

Current a/c no. 6341941152.

Bank – Indian Bank, main branch, Bhubaneswar.

IFSC Code : IDBI 000B024"

16. Another letter was sent by the HUDCO to Mr. A.K.Kedia on 01.05.2021 at 02-34 PM to the effect that : "This is in continuation to our letter dated 27.04.2021 conveying you the outcome of the e-auction process. However, the Hon'ble PO DRT Cuttack vide his interim order dated 27.04.2021 directed not to proceed further in pursuant to the sale notice dared 26.03.2021 and not to conduct the sale on 27.04.2021 till further orders. This order was pronounced much after the conclusion of the e-auction process and communication of confirmation of sale. WE are taking necessary steps to file an appeal before the Appellate Tribunal / Court challenging the aforesaid order and seeking necessary relief. In view of the above development you are requested to please wait for further direction from our end."

17. Another mail was sent by Mr. A.K.Kedia by on 01.05.2021 at 04.00 PM to the effect that :

"Kindly mentioned when to do balance payment of the auction land as you have mentioned about the stay on the auction proceeding of this land, but you have not mentioned about the payments made by us and also what to do for the balance payment to be made to HUDCO for

this land. So kindly clarify.”

18. On 4th May 2021 at 11-18 AM Mr. A.K.Kedia sent an e-mail message to HUDCO asking for payment of the balance amount of auction sale, which is as under :

“Kindly mention when to do balance payment of the auctioned land as you have mentioned about the stay on the auction proceeding of this land, but you have not mentioned about the payments made by us and also what to do for the balance payment to be made to HUDCO for this land.

So kindly clarify.”

19. Learned counsel for the appellant submits that auction sale in question was materialised on the 10th occasion whereas on earlier nine occasions date of auction sale was fixed but could not be materialised for want of bid. On 27.04.2021 appellant participated in the bid and was declared as the highest bidder. Thereafter, 25% of the offered sale price was required to be deposited by 28.04.2021 and the same was deposited. Hence, a right accrued in their favour.

20. Learned counsel for respondent no. 1 and 2 vehemently argued that no doubt, appellant participated in the auction sale but no right accrued in his favour. It is submitted that SA application was listed for hearing for granting stay of auction sale as item no.1 in the cause list for 27.04.2021. Matter was heard by the learned PO, DRT virtually. After hearing the learned counsel for the parties learned PO, DRT has made an oral observation in the Court that no auction should take place till the reasoned order is pronounced. This order was passed in presence of the learned counsel for the appellant as well as respondent no. 1 and 2 and the bank. Despite this observation, auction was held by the HUDCO in violation of the interim order passed by learned PO. Auction itself is illegal as it was done in violation of the order of learned DRT. It is further submitted that communication of detailed order was made by the counsel for respondent no.1 and 2 to the HUDCO at 05.25 PM. Till then 25% of sale amount was not deposited with HUDCO. Hence, no amount should have been deposited after communication of the order, but even then the amount was received by the bank on 28.04.2021, which is in violation of the order

passed by the learned DRT. It is further submitted by the learned counsel for the respondent that even if for the sake of argument it is accepted that 25% of the bid price was deposited by the appellant on 28.04.2021, even then no right accrues in favour of highest bidder without confirmation of sale by the secured creditor. Learned counsel for the respondent has placed reliance upon Rule 9(2) of the Rules of 2002 and the law laid down by the Hon'ble Apex Court in Valji Khimji & Co. Vs. Official Liquidator of Hindustan Nitro Product (Gujarat) Ltd. & Ors Reported in (2008) 9 SCC 299.

21. It is further submitted by learned counsel that since no right accrued in favour of the appellant hence he has no right to file this appeal and the appeal as such is not maintainable and liable to be dismissed.

22. Per contra, learned counsel for the appellant vehemently argued that undisputedly appellants are the highest bidder in the e-auction held on 27.04.2021. There is nothing on record to show or prove that any oral order or observation was made by the learned Presiding Officer of DRT to the effect that sale is stayed at the time of hearing of the interim application for stay. For the first time communication was made as per respondent no.1 and 2 at 05-24 PM on 27.04.2021 through e-mail message. By that time auction was already complete and appellants were directed to deposit 25% of the bid amount to the HUDCO through RTGS. Accordingly, amount was electronically transferred on 28.04.2021. Learned counsel for the appellant further argued that appellants are the highest bidder. They deposited 25% of the sale amount, hence, right accrued in their favour since the bid is complete and they are declared as the highest bidder. Learned counsel for the appellant has placed reliance upon Order XXI Rule 84 of the CPC and submits that as soon as the bid is accepted, a right is accrued in favour of highest bidder. Learned counsel for the appellant also placed reliance upon the judgement of Valji Khimji & Co. (supra) as relied by the learned counsel for the respondents.

23. Now it is to be looked into as to :

(i) Whether any right accrues in favour of the successful bidder who

has deposited the amount equal to 25% of the bid amount on 28.04.2021?
(ii) What is the effect of the interim order of stay of auction sale passed by learned DRT on 27.04.2021?
(iii) Whether any right accrues in favour of the appellant to prefer this appeal and its effect?

24. Learned counsel for the appellant would submit that as soon as bid is complete right accrues in favour of the highest bidder. Learned counsel has placed reliance upon the Order XXI Rule 84 of the CPC which reads as under :

“(1) On every sale of immovable property the to be the purchaser shall pay immediately after such declaration a deposit of twenty-five per cent on the amount of his purchase-money to the officer or other person conducting the sale, and in default of such deposit, the property shall forthwith be re-sold.

(2) Where the decree-holder is the purchaser and is entitled to set-off the purchase-money under rule 72, the Court may dispense with the requirements of this rule.”

25. Learned counsel for the appellant has further placed reliance upon following judgements :

- (1) Hari Shankar Vs. Amina BIbi [(1921) 5 RD 125
- (2) Nur Din Vs. Bulaqi Mal & Sens [1930 SCC OnLine 393]
- (3) Surendramohan Sarkar Vs. Manmathanath Banerji [ILR Vol.LVIII 788]
- (4) Jaibhddar Jha Vs. Matakhuri Jha [AIR 1923 Patna 525]
- (5) A. Poongavana Naicker Vs. S. Muthurama Naidu & Ors. [AIR1953 Mad 762]
- (6) My Palace Mutually Aided Coop. Society Vs. B. Mahesh & Ors. [2022 SCC Online SC 1063]
- (7) S. Hadi Husain Vs. S. Zainul Ibad & Ors. [AIR 1940 Oudh 261]

26. On the strength of the above case laws learned counsel for the appellant submits that a right accrues in favour of the appellant as soon as amount of 25% of the bid amount is deposited by him.

27. Per contra, learned counsel for the respondents submits that Act of 2002 and Rules framed thereunder are complete code and a special Act which will prevail over the general Act. Accordingly, provisions

of Rule 9(2) of the Rules of 2002 would apply for confirmation of sale. Rule 9(2) of the Rules of 2002 reads as under :

“9(2) -The sale shall be confirmed in favour of the purchaser who has offered the highest sale price in his bid or tender or quotation or offer to the authorised officer and shall be subject to confirmation by the secured creditor:

Provided that no sale under this rule shall be confirmed, if the amount offered by sale price is less than the reserve price, specified under sub-rule (5) of rule 9:

Provided further that if the authorised officer fails to obtain a price higher than the reserve price, he may, with the consent of the borrower and the secured creditor effect the sale at such price.”

28. Rules of 2002 were made in exercise of the power conferred by sub-section (1) and clause (b) of sub-section(2) of section 38 read with sub-sections (4), (10) and (12) of section 13 of the Act of 2002.

29. It is clear that the Rules are framed under the power conferred by the Act of 2002. It was held by the Hon'ble Apex Court in a recent judgement of Kotak Mahindra Bank Limited vs Girnar Corrugators Pvt. Ltd. decided on 5 January, 2023 [2023 Vol.3 SCC 210] :

32. At this stage, the object and purpose of the enactment of the SARFAESI Act is required to be considered. The SARFAESI Act has been enacted to regulate securitisation and reconstruction of financial assets and enforcement of security interest and to provide for a Central database of security interest created on property rights, and for matters connected therewith or incidental thereto. Therefore, the SARFAESI Act has been enacted providing specific mechanism/provision for the financial assets and security interest. It is a special legislation for enforcement of security interest which is created in favour of the secured creditor – financial institution. Therefore, in absence of any specific provision for priority of the dues under the MSMED Act, if the submission on behalf of Respondent 1 for the dues under the MSMED Act would prevail over the SARFAESI Act, then in that case, not only the object and purpose of special enactment/the SARFAESI Act would be frustrated, even the later enactment by way of

insertion of Section 26-E of the SARFAESI Act would be frustrated. If the submission on behalf of Respondent 1 is accepted, then in that case, Section 26-E of the SARFAESI Act would become nugatory and would become otiose and/or redundant. Any other contrary view would be defeating the provision of Section 26-E of the SARFAESI Act and also the object and purpose of the SARFAESI Act.

30. It is clear that Code of Civil Procedure, 1908 is a general procedural law to be followed by Civil Courts while the Act of 2002 is a special enactment enacted for specific purposes as held by Hon'ble Apex Court in Kotak Mahindra Bank case (supra). Hence, provision of the Act of 2002 and the Rules framed thereunder would have primacy over the general law provided under CPC. Accordingly, I am of the view that provision of Rule 9(2) of the Rules of 2002 would apply for confirmation of sale. Appellant cannot take advantage of the provision of Order XXI Rule 84 of CPC. Accordingly, case laws on Order XXI Rule 84 of CPC as referred by the learned counsel for the appellant would have no application in the present case.

31. Now it is to be seen as to what would be the effect of Rule 9(2) of the Rules of 2002? Bare perusal of the Rule will show that sale would be confirmed in favour of the auction purchaser who offered highest sale price in the bid and would be subject to confirmation of the secured creditor. There are two proviso to this sub-rule which are not applicable in this case. In Valji Khimji & Co. case (supra) Hon'ble Apex Court held in Para 11 as under :

11. "It may be noted that the auction sale was done after adequate publicity in well-known newspapers. Hence, if any one wanted to make a bid in the auction he should have participated in the said auction and made his bid. Moreover even after the auction the sale was confirmed by the High Court only on 30.7.2003, and any objection to the sale could have been filed prior to that date. However, in our opinion, entertaining objections after the sale is confirmed should not ordinarily be allowed, except on very limited grounds like fraud, otherwise no auction sale will ever be complete."

In the said case sale was confirmed on 30.07.2003. Hon'ble Apex Court held in Para 29 and 30 as under :

“29. In the present case we are satisfied that there is no fraud in the auction-sale. It may be mentioned that auctions are of two types – (1) where the auction is not subject to subsequent confirmation, and (2) where the auction is subject to subsequent confirmation by some authority after the auction is held.

30. In the first case mentioned above i.e. where the auction is not subject to confirmation by any authority, the auction is complete on the fall of the hammer, and certain rights accrue in favour of the auction-purchaser. However, where the auction is subject to subsequent confirmation by some authority (under a statute or terms of the auction) the auction is not complete and no rights accrue until the sale is confirmed by the said authority. Once, however, the sale is confirmed by that authority, certain rights accrue in favour of the auction-purchaser, and these rights cannot be extinguished except in exceptional cases such as fraud.”

32. Hon'ble Apex Court has classified the auction in two categories (1) where the auction is not subject to subsequent confirmation; and (2) where the auction is subject to subsequent confirmation by some authority after the auction is held. It is specifically held by Hon'ble Apex Court that where the auction is not subject to confirmation by any authority, the auction is complete on the fall of the hammer, and certain rights accrue in favour of the auction purchaser. However, where the auction is subject to subsequent confirmation by some authority (under a statute or terms of the auction) the auction is not complete and no rights accrue until the sale is confirmed by the said authority. Once, however, the sale is confirmed by that authority, certain rights accrue in favour of the auction purchaser, and these rights cannot be extinguished except in exceptional cases such as fraud.

33. Sub-rule (2) of Rule 9 of the Rules of 2002 specifically provides that sale would be confirmed subject to confirmation of the secured creditor. As has been held by the Apex Court in Valji case (supra), no rights would accrue till the sale is confirmed by the secured creditor.

34. Now it is to be seen as to whether the sale was confirmed in

favour of appellant by the secured creditor i.e. HUDCO? In the letter No. HUDCO/BBR0/18895/368 dated 27.04.2021 appellants were informed that appellant emerged as a successful bidder and they are required to deposit of 25% of the bid price in terms of tender documents at the earliest but not later than 28.04.2021 by 05.00 PM. There is no mention of confirmation of sale in the letter. Another letter addressed to Mr. A.K.Kedia, partner Jagannath Mahaprabu LLP on 01.05.2021 at 02.34 PM was sent by some Bhubaneshar Ro, authorized officer of HUDCO wherein it is mentioned that :

“in continuation to our letter dated 27.04.2021 conveying you the outcome of the e-auction process. However, the Hon’ble PO, DRT, Cutack vide his interim order dated 27.04.2021 directed not to proceed further in pursuant to the sale notice dated 26.03.2021 and not to conduct the sale on 27.04.2021 till further orders. This order was pronounced much after the conclusion of the e-auction process and communication of confirmation of sale. We are taking necessary steps to file an appeal before the Appellate Tribunal/Court challenging the aforesaid order and seeking necessary relief. In view of the above development, you are requested to please wait for further directions from our end.”

35. As far as confirmation of sale is concerned nothing is on record either before the learned DRT or in this appeal as to when the sale was confirmed by the secured creditor as provided under Rule 9(2) of the Rules of 2002. Even in the letter dated 01.05.2021 no date of confirmation of sale was mentioned. No letter is on record to show that HUDCO had confirmed the sale prior to receiving intimation of stay granted by learned DRT to the effect that not to conduct the sale on 27.04.2021. It shows that the sale was not confirmed by the HUDCO prior to receiving the intimation of stay granted by learned DRT and even thereafter. The sale was not confirmed by the HUDCO in favour of the appellant. As has been held by the Hon’ble Apex Court in Valji Khimji & Co. case (supra) no right will accrue in favour of the appellant until sale was confirmed by the HUDCO. Accordingly, it cannot be accepted that any right accrued in favour of the appellants by merely depositing 25% of sale amount on 28.04.2021. Auction took place on 27.04.2021 at 10-30 AM to 01.30 PM. Hearing of interim

application was made on the same day for stay of the auction. Stay was granted by learned DRT on 27.04.2021. As has been held earlier it could not be accepted that oral order was passed by learned DRT for stay of operation of auction sale. This fact is not in dispute that order for stay of auction sale was passed by learned DRT on 27.04.2021. It is also apparent on record that HUDCO was represented before the DRT on 27.04.2021 and counter was filed by RFI before DRT. Thereafter order were passed for stay of auction sale dated 27.04.2021. When the auction sale was stayed, learned counsel for the appellant submits, that a direction was given to their partner to make payment of 25% of the bid amount to the HUDCO which actually made on 28.04.2021. Payment was made electronically. Hence, they were not in a position to stop receiving the payment. It is also borne out from the record that even auction purchaser knew this fact that auction sale was stayed even then they deposited 25% of the bid amount at his own risk. As far as HUDCO is concerned even if amount was deposited it was the responsibility of HUDCO to immediately refund the amount to the appellant in pursuance of the order of the learned DRT. There was no occasion to keep the amount with the HUDCO. Furthermore, admittedly amount was deposited with the HUDCO after passing the interim order by DRT to the effect that sale should not be conducted on 27.04.2021. Accordingly, even if amount was deposited, it does not create any right in favour of the appellant by merely depositing 25% of the bid amount in the HUDCO account.

36. Hence, it is clear that the appellant as well as HUDCO grossly acted in violation of the order dated 27.04.2021 passed by learned DRT whereby stay was granted on concluding the auction sale.

37. Accordingly I am of the view that no right accrued in favour of the appellant by depositing 25% of the bid amount.

38. Learned counsel for the appellant submits that since appellants have been impleaded as OP in the S.A., hence they have right to file an appeal. Reliance is placed upon the judgement of My Palace Mutually Aided Cooperative Society Vs. B. Mahesh & Ors. [2022 SCC OnLine SC 1063] wherein it was held that a person, who is affected by a judgement but is not a party to the suit, can prefer an appeal with

the leave of the Court. The sine qua non for filing an appeal by a third party is that he must have been affected by reason of the judgement and decree which is sought to be impugned. Learned counsel for appellant submits that appellant is affected party and he has right to file an appeal.

39. I am unable to accept the submission made by the learned counsel for the appellant. As far as appellants are concerned no right accrued in their favour by depositing 25% of the bid amount in spite of the stay order passed by the learned DRT to stay the auction sale. Further no right accrued in favour of the appellant as auction sale was not confirmed as provided under Rule 9(2) of Rules of 2002.

40. Law laid down by the Hon'ble Apex Court in My Palace Mutually Aided Cooperative Society case (supra) would not be applicable. It is held in Para 31 of the judgement that any aggrieved party can prefer an appeal with the leave of the Court. In the present case, appellant has not sought any leave of this Appellate Tribunal to file the appeal.

41. On the basis of the discussion made above, I am of the considered opinion that no right accrued in favour of the appellant on the basis of auction sale held on 27.04.2021. Accordingly, they have no right to file appeal and appeal filed by the appellant is not maintainable.

42. Regarding notices issued under Rule 8(6) and 9(1) of the Rules of 2002 learned DRT has recorded its findings which have not been challenged by the HUDCO. Learned DRT has set aside the auction sale by observing that notice issued under Rule 8(6) was not in accordance with Rule. Finding is recorded against HUDCO, but no appeal is preferred by them. Since no appeal is preferred by HUDCO and no right accrued in favour of the appellant, auction purchaser, I am of the view that appeal is liable to be dismissed being not maintainable. However, the appellant would be entitled to refund of the 25% of the bid amount deposited by them along with interest at the rate of Fixed Deposit prevalent at the relevant time from the date HUDCO received the deposit till the date on which offer is given by

HUDCO to the appellant to take refund of the amount deposited by them.

43. Appeal is dismissed. However, appellant would be entitled to refund of the 25% of the bid amount deposited by them along with interest at the rate of Fixed Deposit prevalent at the relevant time from the date HUDCO received the deposit till the date on which offer is given by HUDCO to the appellant to take refund of the amount deposited by them or if no such offer is made by HUDCO, till the date of actual payment. No order as to costs. File be consigned to record room.

Copy of the order be supplied to the appellant and the respondents and a copy be also forwarded to the concerned DRT.

Copy of the judgement/Final Order be uploaded in the Tribunal's website.

Order dictated, signed and pronounced by me in the open Court on this the 30th day of March, 2023.